

ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

4. The Respondent is Central Missouri State University, which is located in

Warrensburg, Missouri.

#### Statutory and Regulatory Framework

5. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, inter alia, Section 404 of the CWA, 33 U.S.C. § 1344. Section 404 of the CWA provides that pollutants may be discharged only in accordance with the terms of a permit for the discharge of dredged or fill material.

6. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

#### Factual Background

7. On or about August 4, 1998, the U.S. Army Corps of Engineers became aware that Respondent had placed fill material into an unnamed tributary of East Fork Oak Creek, Johnson County, Missouri.

8. Respondent did not have a CWA Section 404 permit for the discharge of fill material into waters of the United States.

#### Findings of Violation

9. The facts stated in paragraphs 7 through 8 above are herein incorporated.

10. Respondent's placement of fill material into an unnamed tributary resulted in the discharge of pollutants from a point source into waters of the United States.

11. Respondent's discharge of fill material from a point source into waters of the United States was performed without a permit issued pursuant to Section 404 of the CWA, 33 U.S.C. § 1344, and is a violation of Section 301 of the CWA, 33 U.S.C. § 1311.

#### CONSENT AGREEMENT

12. Respondent admits the jurisdictional allegations of this Complaint and Consent Agreement/Final Order and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order.

13. Respondent neither admits nor denies the factual allegations contained in this Complaint and Consent Agreement/Final Order.

14. Respondent consents to the issuance of the Final Order and consents to the payment

of a civil penalty as set forth below.

15. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying this Consent Agreement.

16. Respondent and Complainant each agree to bear their own costs and attorney's fees.

17. Nothing contained in the Final Order shall alter or otherwise affect Respondent's obligations to comply with all applicable federal, state and local environmental statutes and regulations and applicable permits.

18. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Complaint and Consent Agreement/Final Order and to execute and legally bind Respondent to it.

### **FINAL ORDER**

IT IS HEREBY AGREED BY THE PARTIES, and pursuant to Section 309(g) of the Clean Water Act (CWA), 33 U.S.C. § 1319(g), IT IS ORDERED that:

1. Respondent shall pay a civil penalty of Seventy-Nine Thousand Three Hundred Three Dollars (\$79,303). Said penalty shall be paid in full within thirty (30) days following receipt by Respondent of a fully executed copy of this Complaint and Consent Agreement/Final Order. Payment made by Respondent shall identify the Respondent by name and docket number and shall be made by certified or cashier's check payable to the United States Treasury and remitted to:

Mellon Bank  
EPA - Region 7  
Regional Hearing Clerk  
P.O. Box 360748M  
Pittsburgh, PA 15251

A copy of the transmittal letter and check shall be mailed to:

Jenna Wischmeyer  
U.S. EPA Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Should the civil penalty not be paid as provided above, interest will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on the overdue amount from the due date through the date of payment.

### PARTIES BOUND

2. This Final Order shall apply to and be binding upon Respondent, its agents, successors and assigns. Respondent shall ensure that its directors, officers, employees, contractors, consultants, firms or other persons or entities acting under or for them with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

### RESERVATION OF RIGHTS

3. EPA reserves the right to enforce the terms of this Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319.

4. With respect to matters not addressed in this Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA, or any other available legal authority, including without limitation, the right to seek injunctive relief, monetary penalties and for punitive damages.

### EFFECTIVE DATE

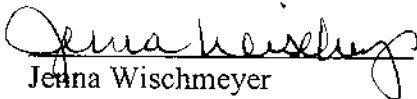
5. This Final Order shall be effective upon receipt by Respondent of a fully executed copy hereof. All time periods herein shall be calculated therefrom unless otherwise provided in this Final Order.

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY



Carol Kather  
Acting Director  
Water, Wetlands, and Pesticides Division  
U.S. Environmental Protection Agency  
Region VII

4/8/03




Jenna Wischmeyer  
Assistant Regional Counsel  
U.S. Environmental Protection Agency  
Region VII

4-8-03

*In the Matter of Central Missouri State University, Docket No. CWA-07-2003-0083*

RESPONDENT:

CENTRAL MISSOURI STATE UNIVERSITY

A handwritten signature in cursive script, appearing to read "Bobby R. Patton", written over a horizontal line.

Name: Bobby R. Patton

Title: President

3-24-03

Date:

IT IS SO ORDERED.

A handwritten signature in cursive script, appearing to read "Robert L. Patrick", written over a horizontal line.

Robert L. Patrick  
Regional Judicial Officer

June 3, 2003  
Date

IN THE MATTER OF Central Missouri State University, Respondent  
Docket No. CWA-07-2003-0083

CERTIFICATE OF SERVICE

I certify that the foregoing Complaint and Consent Agreement and Final Order was sent this day  
in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Jenna Wischmeyer  
Assistant Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

William F. Ford, Esq.  
Lathrop & Gage  
2345 Grand Boulevard, Suite 2800  
Kansas City, Missouri 64108-2684

Dated: 6/3/03

  
Kathy Robinson  
Regional Hearing Clerk